



PUBLIC NOTICE

Federal Communications Commission
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**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT
ON PETITION OF MDS OPERATIONS, INC. FOR WAIVER OF
MULTICHANNEL VIDEO DISTRIBUTION AND DATA SERVICE TECHNICAL RULES**

WT Docket No. 07-255

Comments due: December 19, 2007
Reply Comments due: January 18, 2008

Pursuant to Section 1.925(c) of the Commission's rules,¹ the Wireless Telecommunications Bureau ("Bureau") hereby seeks comment on the request of MDS Operations, Inc. (MDS Operations),² for waiver of Sections 101.105(a)(4), 101.147(p), and 101.1440 of the Commission's rules.³ These rules, which set power limits for stations in the Multichannel Video Distribution and Data Service (MVDDS) at 12.2-12.7 GHz, limit Effective Isotropic Radiated Power (EIRP) levels at 14 dBm per 24 MHz.⁴

MDS Operations, licensee of 80 MVDDS licenses, seeks a waiver to allow it to operate transmitters at Effective Isotropic Radiated Power (EIRP) levels of up to 40 dBm per 24 MHz of spectrum in each of its 80 licensed service areas.⁵ MDS Operations states that granting the requested waiver would not negatively impact Direct Broadcast Satellite (DBS) reception but would further the Commission's goal of allowing the rapid, flexible deployment of MVDDS services.⁶ MDS Operations also argues that granting its waiver request would further the public interest through the development of new services.⁷

¹ 47 C.F.R. § 1.925(c).

² See MDS Operations, Inc., Petition for Rule Waiver filed on May 7, 2007, as corrected on August 29, 2007 (herein, "Petition" refers to the corrected version); Supplement to Petition for Rule Waiver filed on August 29, 2007 ("Supplement").

³ 47 C.F.R. §§ 101.105(a)(4), 101.147(p), and 101.1440.

⁴ 47 C.F.R. § 101.147(p).

⁵ Petition at 2.

⁶ *Id.* at 5.

⁷ *Id.* at 6.

When the Commission adopted service rules for MVDDS in 2002, it contemplated that MVDDS services providers might petition for waivers of the MVDDS technical rules.⁸ Specifically, the Commission stated that “any entity seeking to employ a terrestrial service technology that does not comply with the technical rules must file a waiver petition, on which public comment will be sought.”⁹ As part of this waiver-request process, the Commission stated that the entity “must submit an independent technical demonstration of its equipment and technology.”¹⁰ We invite interested parties to comment on MDS Operations’ statement that it has met this requirement and on MDS Operations’ Petition.¹¹

Procedural Matters

The Petition is available for public inspection and copying in the Commission's Reference Center, Room CY A257, 445 12th Street, S.W., Washington, DC 20554. Copies of the Petition also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number shown on the first page. Copies of the Petition are also available from Best Copy and Printing, Inc., telephone (800) 378-3160, facsimile (301) 816-0169, e-mail FCC@BCPIWEB.com.

Comments on the Petition are due on the dates indicated on the first page of this public notice and must reference the docket number shown on the first page. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to [http:// www.fcc.gov/cgb/ecfs/](http://www.fcc.gov/cgb/ecfs/). Filers should follow the instructions provided on the website for submitting comments. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, “get form.” A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four (4) copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The

⁸ *See, e.g.*, Supplement at 3 *citing* Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission’s Rules to Authorize Subsidiary Terrestrial use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. To Provide a Fixed Service in the 12.2-12.7 GHz Band, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd. 9614, 9704 at ¶ 236 (2002) (“*MO&O*”).

⁹ *MO&O* at ¶ 236.

¹⁰ *Id.*

¹¹ *See, e.g.*, Petition at 4, 8 *citing* Exhibit One. “MDS America [an affiliate of MDS] asked [Analytic Consulting Services] to devise an independent technical demonstration, pursuant to paragraph 236 of the *MO&O*,” Exhibit One at 2, and “Dr. Bahman Badipour designed the test procedure and protocols. He and employees of [ACS] conducted the field test for this project, while Gopi Flattery and Allen Quinn of MDS America provided assistance in the operation of MDS transmitter and logistical support.” Exhibit One at 4.

Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.

- The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Parties shall send one copy of their comments and reply comments to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, facsimile (202) 488/5563, or via e-mail FCC@BCPIWEB.com. Comments filed in response to this Public Notice will be available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY-A257, Washington, D.C. 20554, and via the Commission's Electronic Comment Filing System (ECFS) by entering the Docket Number shown on the first page of this public notice. The comments may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Unless otherwise provided, requests for waiver of the Commission's Rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. See Sections 1.1200(a), 1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this Public Notice, *ex parte* presentations that are made with respect to the issues involved in the subject waiver request will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b). Parties making oral *ex parte* presentations in this proceeding are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.¹² More than a one-or two-sentence description of the views and arguments presented is generally required.¹³

For further information, contact Kevin Holmes, Broadband Division, Wireless Telecommunications Bureau at (202) 418-BITS, or by e-mail at kevin.holmes@fcc.gov.

By the Chief, Broadband Division, Wireless Telecommunications Bureau.

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¹² See "Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings," *Public Notice*, 15 FCC Rcd 19945 (2000).

¹³ See 47 C.F.R. § 1.1206(b)(2). For further guidance regarding the requirements and content of *ex parte* submissions, see also Fact Sheet, "FCC's Ex Parte Rules," July 2001, http://www.fcc.gov/ogc/admain/ex_parte_factsheet.html. Other rules pertaining to oral and written presentations are set forth in § 1.1206(b) as well. *Id.* § 1.1206(b).